BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market.	)))	Case No. 12-3151-EL-COI

ENTRY ON REHEARING

The Commission finds:

(1) On December 12, 2012, the Commission issued an Entry initiating an investigation into the health, strength, and vitality of Ohio's competitive retail electric service (CRES) market. The investigation was intended to establish actions that the Commission can take to enhance the health, strength, and vitality of the market. In the Entry initiating the investigation, the Commission presented a series of questions to stakeholders regarding market design and corporate separation as they impact the CRES market.

(2) On March 23, 2014, the Commission issued its Finding and Order (Order), adopting, in part, the recommendations in Staff's Market Development Work Plan (Work Plan), with modifications.

(3) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(4) On April 25, 2014, Direct Energy, The Dayton Power and Light Company (DP&L); Ohio Partners for Affordable Energy, AARP, the Ohio Poverty Law Center, Edgemont Neighborhood Coalition, Pro Seniors, Inc., Southeastern Ohio Legal Services, Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Communities United for Action, and the Citizens Coalition (collectively, the Low-income Advocates or LIA); Ohio Consumers' Counsel (OCC); IGS Energy (IGS); Duke Energy Ohio, Inc. (Duke); Ohio Power Company (Ohio Power); Ohio Edison Company, the

Toledo Edison Company, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy); Northeast Ohio Public Energy Council (NOPEC); and FirstEnergy Solutions Corp. (FES) filed applications for rehearing.

(5) Thereafter, on May 5, 2014, OCC, the Low-income Advocates, FirstEnergy, Duke, FES, IGS, Direct Energy, and the Retail Energy Supply Association (RESA) filed memoranda contra various applications for rehearing.

OHIO RETAIL ELECTRIC SERVICE MARKET DEFINITION AND MEASUREMENTS

(6) In its application for rehearing, NOPEC argues that the Commission's adoption of a definition for "effective competition" and eight measurements as indicators of the health of the CRES market was unreasonable and unlawful. More specifically, NOPEC argues that the Commission's adopted definition and metrics are essentially a rule adopted by the Commission, which is unlawful as it was adopted without compliance with R.C. 119.01(I) and 119.02. Further, NOPEC argues that the eighth measurement adopted—"customers are engaged and informed about the products and services they receive" - is void for vagueness in violation of the due process protections of the Ohio and United States Constitutions. Finally, NOPEC argues that the construction of the term "engaged" in the concurring opinion to the Order is unlawful because it conflicts with legislative intent. (NOPEC at 3-7.)

DP&L asserts that clarification is needed on what information the Commission will use to measure whether customers are engaged, and from whom the Commission will seek the information. DP&L suggests that the Commission hire a third party or focus group to conduct and publish an annual survey to determine if customers are engaged and informed. DP&L also recommends that the Commission require CRES providers to pay for the survey because they are the parties who benefit from the competitive marketplace. (DP&L at 3.) Similarly, FirstEnergy asserts that the Order should be clarified to

define "active CRES provider" and to indicate that the EDUs are not required to provide data related to customers who are engaged and informed about CRES products (FirstEnergy at 6-8).

RESA and IGS argue in their memoranda contra that the Commission should deny rehearing on the issues raised in NOPEC's and FirstEnergy's applications for rehearing. RESA and IGS assert that, contrary to FirstEnergy's assertions, Staff never defined "active CRES providers" as those providers on the Apples-to-Apples chart or as anything else. Further, RESA and IGS argue that the Commission does not need to adopt a definition for this term because it can be given its ordinary meaning. (RESA MC at 10; IGS MC at 1.) IGS further disputes NOPEC's application for rehearing, asserting that it is unclear how a metric in a Commission order, which is not an actual change to the electric rules, violates constitutional rights. IGS additionally points out that, although NOPEC disputes the concurrence to the Order, concurring opinions have no binding effect and, therefore, there is no basis for rehearing. (IGS MC at 2-3.)

(7) The Commission finds that rehearing on the issues raised by NOPEC should be denied. The Commission emphasizes that the Commission's adoption of a definition for "effective competition" and eight measurements as indicators of the health of the CRES market involved no changes to the Commission's electric rules, and impose no limits or requirements upon any persons, with the exception of the EDUs' informal provision of data to Staff. Instead, the definition and measurements were adopted solely for the purpose of the Commission's monitoring of the CRES market, with data to be published on the Commission's website for interested parties to view. Order at 9-10. Consequently, the Commission does not find that an unlawful rule was adopted or that any measurement violates the due process protections of the Ohio and United States Constitution.

The Commission finds, however, that clarification as requested by DP&L and FirstEnergy is warranted. The Commission acknowledges that the eighth measurement, whether customers are engaged and informed about the products and services they receive, is a measurement that is difficult to quantify due to its nature. Nevertheless, the Commission believes that this measurement is important in gauging the health of the CRES market. The Commission further notes that this measurement will be gauged solely by the Commission's Staff, who will examine internal Commission data including the number of visits to the Commission's Energy Choice Ohio website, surveys, attendance at Commission Energy Choice Ohio events, and Energy Choice Ohio-related calls to the Commission's consumer call center. As the Commission's Staff will compile this information, the Commission does not find it is necessary to hire a third party or focus group as recommended by DP&L. Finally, the Commission clarifies that active CRES providers are determined based upon the information provided to the Commission's Staff. Consequently, the Commission finds that the applications for rehearing filed by DP&L and FirstEnergy, to the extent not clarified herein, are denied.

CONFIDENTIALITY OF SUPPLIER INFORMATION

(8) OCC argues in its application for rehearing that the Order is unlawful and unreasonable because it found that certain information filed at the Commission would be held as confidential, which OCC contends violates R.C. 4905.07. Additionally, OCC alleges that the Order unreasonably relieves CRES providers from demonstrating the need for confidential treatment of information, which violates Ohio Adm.Code 4901-1-24. (OCC at 3-6.) Similarly, the Low-income Advocates argue that the Order is unlawful and unreasonable because it does not require that information on the number of customers served and load served in megawatt hours (MWh) for each CRES provider be made a public record (LIA at 12-13).

In their memoranda contra, FES, IGS, FirstEnergy, and RESA argue that the Commission should deny rehearing on OCC's and the Low-income Advocates' applications for rehearing on this issue. FES, IGS, FirstEnergy, and RESA assert that the Commission correctly ruled that certain CRES provider information should remain confidential. While R.C. 4901.12 and 4905.07 make all information in the Commission's possession public, it does so only as is consistent with the purposes of R.C. Title 49. According to FES, IGS, FirstEnergy, and RESA, if the Commission published the confidential CRES provider and market data, it would contradict directly R.C. Title 49. FES, IGS, FirstEnergy, and RESA argue that R.C. 4928.06(F) provides that the Commission shall take measures as it considers necessary to protect the confidentiality of any such information. (FES MC at 2-4; IGS MC at 1; FirstEnergy MC at 9-11; RESA MC at 11-12.) Further, FES argues that Ohio Adm.Code 4901-1-24 and 4901-1-27(B)(7)(e), which OCC cites as authority for its position, are inapplicable because those sections of the Ohio Administrative Code only apply to discovery and hearings, not disclosure of CRES providers' market share data (FES MC at 2-3).

(9) The Commission finds that OCC's and the Low-income Advocates' applications for rehearing on this issue should be denied. As we noted in the Order, pursuant to R.C. 4905.07, all information contained in the reports provided to Staff shall be deemed public information, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. Order at 11. Additionally, R.C. 4928.06(F) directs the Commission to take any measures it considers necessary to protect the confidentiality of any information provided to it. The Commission's determination to keep confidential information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(2)(d), (A)(3), and (A)(4), until such time as a request for disclosure is filed, is consistent with R.C. 149.43(B)(1), (B)(2), and (B)(3), and is standard practice when parties submit information claimed to be confidential. If a motion for protective order is filed, the Commission's entry granting or denying the motion satisfies the requirement of

R.C. 149.43(B)(3) to provide the requester with an explanation, including legal authority, setting forth why the request was denied. Additionally, providing parties an opportunity to file a motion for protective order pursuant to Ohio Adm.Code 4901-1-24 and R.C. 4928.06(F) is consistent with the purposes of R.C. Title 49.

PURCHASE OF RECEIVABLES

(10) In its application for rehearing, FirstEnergy argues that the Order should be clarified to specifically waive any rule, including Ohio Adm.Code 4901:1-37-04(D)(1), which would prohibit the disclosure of customer information. FirstEnergy avers that certain rules prohibit disclosure of some of the information that the Order directed the EDUs to provide to CRES providers, including total customer payment amount, the amount billed by the CRES provider, the amount of payment allocated to the CRES provider, and the date payment was applied. (FirstEnergy at 8-9.) Similarly, DP&L argues that the Order is unlawful and unreasonable because it directs the EDUs to work with CRES providers through the MDWG to develop proper procedures for providing, among other things, the total customer payment amount. DP&L asserts that the total customer payment amount is confidential information that it is not at liberty to provide to a third party without the customer's consent. (DP&L at 5.)

(11) The Commission finds that rehearing on this issue in FirstEnergy's and DP&L's applications for rehearing should be denied. Initially, the Commission notes that the Order directed the EDUs to work with CRES providers and the MDWG; it did not order the EDUs to begin disclosing information. Order at 21-22. Accordingly, during discussion with CRES providers as part of the MDWG, if the EDUs believe that Commission rules require customer authorization for the release of certain information, the EDUs should then seek limited waivers of the applicable rules. Finally, the Commission notes that it has proposed revisions to Ohio Adm.Code 4901:1-10-24 in *In re Comm. Rev. of Chapter 4901:1-10, Ohio Adm.Code, Regarding Elec.*

Cos., Case No. 12-2050-EL-ORD (*Chapter 10 Rule Review*), Finding and Order (Jan. 15, 2014), providing for a customer information release consent form that may resolve these issues.

ELECTRONIC DATA INTERCHANGE

(12) The Low-income Advocates assert error that the Commission unlawfully and unreasonably failed to require the participation of various consumer advocates in the MDWG and failed to call for independent advisors to inform customers about CRES providers and their offerings (LIA at 17-18).

(13) The Commission finds that rehearing on this issue should be denied. The Commission has not precluded consumer advocates or any person from participating in the MDWG. In fact, the Commission indicated in the Order that the MDWG should consist of CRES providers, the EDUs, and any other interested stakeholders. Order at 23. If a consumer advocate is an interested stakeholder, then it may participate in the MDWG. Additionally, although the Low-income Advocates contend that the Work Plan failed to recommend the establishment of a utility advisors agency, the Commission addressed this issue in the Order, explaining that Staff was not required to incorporate all stakeholders' recommendations into the Work Plan. Order at 3-4. The Commission declines to find now that establishment of a utility advisors agency is necessary.

SEAMLESS MOVES / CONTRACT PORTABILITY

(14) FirstEnergy argues that the Order is unreasonable because it provided that the MDWG should develop an operational plan for the purpose of implementing either a statewide seamless move, contract portability, instant connect, or warm transfer process. FirstEnergy asserts that the Order is unreasonable because it directed that a statewide plan should be discussed, instead of the best operational plan for each specific EDU. Additionally, FirstEnergy contends that cost issues associated with any seamless move

program must be addressed and the Companies must be allowed to recover the costs through an existing or new tariff or rider mechanism. (FirstEnergy at 9-11.)

(15) The Commission notes that the Order did not adopt a statewide plan, but merely directed the MDWG to further evaluate the plans, and, thereafter, Staff to present a proposal to the Commission. Order at 25. The Commission does not believe that it is unreasonable to direct Staff to further evaluate the issue and to make a proposal to the Commission. Additionally, we note that Pennsylvania has also recently evaluated these proposals and has taken steps to streamline its processes. *Pennsylvania Public Utility Commission's Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Case No. I-2011-2237952, Final Order (Feb. 14, 2013).

Further, the Commission believes that a statewide plan should be evaluated, and eventually implemented, because it would be most beneficial to customers and to market development. Finally, the Commission will address cost recovery issues at the time such statewide plan is actually implemented. Accordingly, rehearing on this issue in FirstEnergy's application for rehearing is denied.

(16) NOPEC argues that the Order is unreasonable and unlawful because it defers to the MDWG as to whether shopping customers who move to a new address must first return to the SSO. NOPEC contends that the Commission has indicated a preference for shopping customers to maintain their status as shopping customers in violation of R.C. 4928.20. NOPEC alleges that Ohio law requires customers establishing new service in a community to be enrolled first in the SSO so that they may have the opportunity to be enrolled in their new community's aggregation program. NOPEC argues that, in order to prevent hindering of discussions in the MDWG, the Commission should determine now whether customers who move to a new address or community must return to

SSO service in order to have an opportunity to participate in community aggregation programs. (NOPEC at 8-9.)

(17) The Commission finds that rehearing on this issue should be denied. NOPEC's assertion that either a statewide seamless move, contract portability, instant connect, or warm transfer process may have an effect on aggregation is one of the reasons we directed the MDWG to further evaluate each of the options. Further, we do not agree with NOPEC that any of the options would violate R.C. 4928.20. We note that, under a contract portability program, a customer's CRES contract would travel with the customer to the new address, and, pursuant to R.C. 4928.20(H)(2), a governmental aggregator would not be permitted to include in its aggregation the account of the customer in contract with a CRES provider. However, many CRES contracts can be cancelled by the customer, often without a cancellation fee, which would permit a customer to cancel the CRES contract and join the community aggregation.

Additionally, while we directed the MDWG to file a proposal, we clarify that, since Staff will be facilitating the MDWG, Staff should file the proposal in a Staff Report after evaluating the issue through the MDWG. We will then evaluate whether the proposal complies with R.C. 4928.20 when it is presented to us. Accordingly, rehearing on this issue is denied.

BILL FORMAT

(18) DP&L, Ohio Power, Duke, and FirstEnergy argue that the Order is unlawful and unreasonable because it did not authorize for deferral and recovery costs associated with the bill format changes (DP&L at 5-6; Ohio Power at 2-5; Duke at 7-8; FirstEnergy at 4-6). DP&L argues that the Commission's general indication that the costs would be recoverable in a distribution rate case as a normal operating expense is insufficient to allow the electric utility to fully recover the incremental cost of the new regulatory requirements. Additionally, DP&L argues that, without

authorizing deferral authority of costs, there will be an under-recovery of the costs. (DP&L at 5-6.)

On the other hand, OCC and the Low-income Advocates argue in their applications for rehearing that the Order is unreasonable and unlawful because it is inappropriate to recover from distribution ratepayers the costs associated with bill format changes for generation charges (OCC at 11-12; LIA at 7-11.)

In their memoranda contra, RESA and IGS argue that the Commission appropriately ordered that the costs associated with the bill format changes should be recovered through distribution rates (RESA MC at 4, 7-8; IGS MC at 2). RESA asserts that EDU billing is a distribution function that is paid by all of the EDU's customers. Additionally, RESA asserts that the Ohio Supreme Court has affirmed the legality of imposing costs on EDU customers for updating billing software. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153. (RESA MC at 8.) IGS asserts that it would be unreasonable to require CRES providers to pay for billing upgrades for shopping customers when billing functionality to support the SSO is recovered from all customers, including shopping customers (IGS MC at 2).

However, OCC and the Low-income Advocates argue in their memoranda contra that the Commission should deny the EDUs' applications for rehearing on this issue because distribution customers should not fund the changes to the bill format. OCC and the Low-income Advocates aver that the changes to the bill format promote generation service; therefore, they are generation costs. According to OCC and the Low-income Advocates, paying for the generation-related bill format changes through distribution rates violates R.C. 4928.02(H). (OCC MC at 3-5; LIA MC at 2-5.)

(19) The Commission finds that the EDUs may file applications for authority to defer expenses related to the bill format changes when they file applications to amend their bill

formats. The Commission will then evaluate the applications for deferral authority to determine whether the deferred costs are reasonable, appropriately incurred, clearly and directly related to the circumstances for which they were authorized, and in excess of expense amounts already included in rates at the time of approval. *See In re Ohio Edison Co., the Cleveland Elec. Illum. Co., and the Toledo Edison Co.*, Case No. 05-704-EL-ATA, et al., Opinion and Order (Jan. 4, 2006) at 8-9; *Elyria Foundry Co. v. Pub. Util. Comm. of Ohio*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176. Additionally, as we indicated in the Order, the Commission believes that the bill format changes are most appropriate for recovery by the EDUs in a distribution rate case. Order at 26. Accordingly, the Commission finds that rehearing on these assignments of error raised by DP&L, Ohio Power, Duke, FirstEnergy, OCC, and the Low-income Advocates should be denied.

(20) DP&L, Duke, FirstEnergy, FES, OCC, and the Low-income Advocates assert that the Commission unreasonably and unlawfully ordered that the price-to-compare be standardized as a rolling annual average using the SSO rate for the previous 12 months divided by the customer's usage (DP&L at 3-4; Duke at 6-7; FirstEnergy at 11-13; FES at 2-4; OCC at 6-11; LIA at 13-15).

DP&L, Duke, and FirstEnergy argue that the 12-month rolling average price-to-compare is unnecessary and will cause customer confusion, particularly due to percent-off current month price-to-compare offers by CRES providers (DP&L at 3-4; Duke at 7; FirstEnergy at 12). DP&L asserts that the Commission should have adopted, unmodified, Staff's recommendation in the Work Plan that the price-to-compare be calculated by dividing the dollar amount of the current month's bill that could be avoided with switching by the number of kWh used that month. DP&L states that this method is consistent with the current methodology used by AEP-Ohio, FirstEnergy, and DP&L (DP&L at 3-4). Duke and FirstEnergy also contend that their respective methodologies for calculating price-to-compare are more accurate than the Commission's methodology, which

entails historic pricing information (Duke at 7; FirstEnergy at 11-12). Similarly, FES avers that using a rolling annual average will result in less transparency and will not provide customers a useful indication of the cost of SSO service (FES at 3-4).

OCC and the Low-income Advocates assert that the rolling annual average does not represent the current or actual price-to-compare in effect at the time of disclosure and may be misleading (OCC at 6-7; LIA at 14). OCC proposes, as an alternate, that, for Duke and FirstEnergy, the auction-based price that has been predetermined for a specific period of time should be utilized rather than a historic price-to-compare; and, for AEP and DP&L, the price-to-compare be set based on the ratio of auction pricing and base generation rates. (OCC at 6-11.)

In its memorandum contra, IGS agrees that the price-to-compare should not be calculated based on a 12-month rolling average (IGS MC at 3). Similarly, in its memorandum contra, FirstEnergy reiterates its argument that a rolling average price-to-compare should not be adopted; however, FirstEnergy urges the Commission to deny OCC's recommended alternative using a projected price-to compare for each 12-month period June through May. While FirstEnergy proffers that this recommendation is better than the option adopted by the Commission in the Order, FirstEnergy argues that it is impossible to accurately forecast a 12-month price-to-compare and this method also could be confusing for customers. (FirstEnergy MC at 11-12.)

RESA argues in its memorandum contra the applications for rehearing that the Commission's adopted price-to-compare formula is appropriate. More specifically, RESA asserts that a "snapshot" price-to-compare, as requested by some parties, is also not an actual price-to-compare, as it is based on historical usage and power prices from a prior month. RESA additionally argues that a snapshot price-to-compare cannot be compared fairly with a long-term, fixed-rate CRES offer, and that the rolling average price-to-

compare adopted by the Commission provides the customer with better information upon which to compare a CRES offer. (RESA MC at 8-10.)

(21) The Commission acknowledges the opposition to the rolling annual average price-to-compare and finds that the applications for rehearing filed by DP&L, Duke, FirstEnergy, FES, OCC, and the Low-income Advocates should be granted on this issue, to the extent discussed herein. As argued by DP&L, Duke, and FirstEnergy, the Commission agrees that a rolling annual average price-to-compare could cause confusion among customers with percent-off price-to-compare contracts by CRES providers. However, the Commission does not agree that use of a rolling annual average will not provide customers with a useful indication of the cost of SSO service. The Commission initially adopted the rolling annual average price-to-compare in order to provide customers shopping for long-term, fixed-rate CRES contracts with a 12-month span of information in order to account for seasonal pricing fluctuations. Although the Commission continues to harbor this concern as to fixed-rate contracts, the Commission finds that, at the present time, Staff's recommendation in the Work Plan should be adopted. Consequently, the price-to-compare should be calculated by dividing the dollar amount of the current month's bill that could be avoided with switching by the number of kWh used that month. *See In re Applications of the Elec. Distrib. Util. for Approval of a Sample Bill Format for Elec. Servs.*, Case No. 00-1998-EL-UNC, Entry (Oct. 26, 2000) at 1-2. In order to address the Commission's and RESA's concerns, however, the Commission finds that the MDWG should continue to study methods of calculating the price-to-compare.

(22) Duke and FirstEnergy argue that the Order is unjust and unreasonable because it requires the EDUs to provide CRES provider logos on customer bills (Duke at 4-6; FirstEnergy at 13-16). Duke alleges that providing CRES provider logos on customer bills is costly and unnecessary, and that there is no record support that such a change is

needed (Duke at 5). Additionally, OCC and the Low-income Advocates contend that placement of such CRES provider logos is a CRES supplier marketing objective or promotional tool (OCC at 11-12; LIA at 9-11).

IGS and RESA argue in their memoranda contra that the Commission should deny rehearing on this assignment of error. IGS and RESA argue that customer bills include EDU and CRES provider charges; therefore, CRES provider logos can and should be included on customer bills. IGS and RESA aver that the General Assembly has vested in the Commission the responsibility to oversee and regulate public utilities, and aspects of the CRES market, because the Commission has special expertise and knowledge in those areas, including utility billing. IGS and RESA indicate that customers have had difficulty with knowing or remembering which CRES provider they selected and who to contact if they have a problem. (IGS MC at 1; RESA MC at 4-8.)

Further, IGS and RESA contend that there is a strong statutory foundation for the Commission's determination. First, R.C. 4928.10(C)(3) specifically states that the Commission has the authority to adopt rules which include identification of the CRES supplier on customer bills. Second, pursuant to R.C. 4928.07, CRES services shall be separately priced and shall be itemized on the bill of a customer or otherwise disclosed to the customer. Third, the Commission has plenary authority over EDU billing, which can be seen in R.C. 4905.22, 4905.04, 4928.06, and 4928.11. (IGS MC at 1-2; RESA MC at 5-7.)

Similarly, Direct Energy notes that, in Columbia Gas of Ohio's territory, supplier logos are placed on consolidated bills. Direct Energy asserts that this has led to increased customer awareness of supplier identity and supplier services. Direct Energy avers that the addition of CRES provider logos on customer bills will lead to greater customer engagement and understanding of the CRES market. (Direct Energy at 2.)

(23) The Commission finds that rehearing on this issue should be denied. As the Commission indicated in the Order, displaying the applicable CRES provider's logo is consistent with R.C. 4928.02, 4928.07, and 4928.10. Order at 26. The Commission notes that there is significant record support for the addition of CRES provider logos on customer bills, as this was proposed in the Work Plan, and all stakeholders were provided an opportunity to file comments and reply comments on the Work Plan. (Work Plan at 20). The Commission was responsive to many of the comments and reply comments filed in this case, and even permitted CRES providers to use their name instead of the logo, at the CRES provider's discretion.

Further, while the Commission understands that there are costs involved with providing CRES provider logos on customer bills, the Commission indicated in the Order that the EDUs may file applications for recovery of those costs, and, as indicated above, may file applications for deferral authority until their next distribution rate case. Order at 26. While a CRES provider's logo may represent the supplier of the generation, the function of billing is a traditional function of the distribution utility. Billing is a distribution service and changes to an EDU's billing system to revise the bill format should be appropriately recovered through base distribution rates.

Additionally, we find no merit to the argument that CRES provider logos on customer bills is for marketing or promotional purposes. The CRES provider's logo or name is being provided on customer bills for customer awareness and consumer protection purposes. In any market, customers generally know the producer or provider of the product or service that they are purchasing. Similarly, the Commission finds that, in Ohio, electric bills should inform customers of the provider of the product or service that is being purchased.

(24) DP&L argues that the Order is unlawful and unreasonable because it will result in numerous filings and bill format applications. DP&L asserts that bill format redesigns are

complex and costly and should not be duplicated multiple times within the span of less than one year. DP&L proposes that the Commission review Staff's initial MDWG report, once all of the bill format issues have been considered, prior to ordering the EDUs to file applications for bill format changes. (DP&L at 4-5.) In its memorandum contra, FirstEnergy joins DP&L's argument (FirstEnergy MC at 4).

(25) The Commission finds that rehearing on this issue raised by DP&L should be denied. As directed in the Order, the EDUs must file an application, within six months, to revise their consolidated bill format to bring it into conformity with R.C. 4928.02, 4928.07, 4928.10, and the Commission's findings in this case. Order at 26. While the Commission directed stakeholders to work through the MDWG to resolve any issues regarding additional bill format changes, the Commission does not expect that those issues will be resolved in the short-term. The Commission's intent was to adopt those market enhancements that can be readily implemented in the short-term, while establishing a forum for further analysis of additional market enhancements that may be implemented in the long-term. Accordingly, within six months of this Entry on Rehearing, the EDUs should file applications with the Commission to amend their bill format to include CRES provider logos, including those CRES providers serving aggregation customers, and the standardized price-to-compare.

(26) NOPEC argues that the Order is unlawful and unreasonable because it does not require the EDUs to include governmental aggregators' names or logos on the EDU's bill. NOPEC asserts that, when customers shop through opt-out governmental aggregation, the customer relationship is between the customer and the governmental aggregator. NOPEC avers that the governmental aggregator forms the program, adopts its rules, enrolls its members, selects the supplier to serve the membership, and negotiates with the supplier the groups' rates, terms, and conditions of service, consistent with R.C. 4928.20. NOPEC contends that listing the CRES provider, and not the

governmental aggregator, on the EDU's bill gives the CRES provider an undue advantage in the competition to serve a community's residents. NOPEC alleges that this undue advantage violates R.C. 4928.02(A), 4928.02(C), and 4928.20(K). (NOPEC at 9-10.)

FirstEnergy argues in its memorandum contra that the Commission should deny rehearing on this issue raised by NOPEC. FirstEnergy initially reiterates its argument that it is unlawful to order the EDUs to place CRES provider logos or names on customer bills. However, FirstEnergy asserts that, if the Commission does order CRES provider logos or names on customer bills, then the Commission should deny NOPEC's request to include aggregator logos or names on customer bills. FirstEnergy contends that adding the aggregator's logo or name would increase the costs and burdens associated with changing the bill format and would create customer confusion. (FirstEnergy MC at 12.)

(27) The Commission finds that NOPEC's application for rehearing should be denied on this issue. The Commission finds that customer bills for customers participating in a governmental aggregation program should contain the logo or name of the CRES provider that is supplying the generation service. The Commission ordered the inclusion of CRES providers' logos on customer bills in order to identify for customers the supplier of the generation service for which they are paying. Customers participating in a governmental aggregation program are still being supplied generation service by a marketer, even if that supply is being provided through a negotiated agreement between the governmental aggregator and the supplier. Customers participating in governmental aggregation deserve the same consumer protection and awareness as all other customers, consistent with R.C. 4928.02, 4928.07, and 4928.10. Accordingly, the logo or name of the supplier of generation to the governmental aggregation program should be provided on the customer bills. However, the government or the aggregator's logo or name should not be placed on customer bills since they are providing a service

that is, by statutory definition, separate and distinct from generation service. R.C. 4928.02(A)(27).

Additionally, the Commission again emphasizes that providing CRES provider logos or names on customer bills is not for marketing or promotional purposes. As discussed in Finding (23), CRES providers' logos or names are being provided on customer bills for customer awareness and consumer protection purposes. Additionally, the service that customers are purchasing that is reflected on the bill is generation service, and is not aggregation service, time-differentiated rate service, or any other unique product or service that is related to that supply of generation service.

ADVANCED METERING INFRASTRUCTURE

(28) Direct Energy asserts that the Order is unlawful and unreasonable because it does not explicitly state that EDUs must provide interval customer energy usage data (CEUD) to CRES providers after the Commission approves tariffs required by the Order. Additionally, Direct Energy argues that the Order does not place time parameters on when the EDUs must file tariffs regarding interval CEUD after the Commission finishes its rule review in *Chapter 10 Rule Review*. (Direct Energy at 5-7.)

Similarly, IGS argues that the Commission should set forth minimum standards of data that must be made available to CRES providers if the customer consents to providing such data. IGS avers that the EDUs should be required to provide CRES providers with peak load contributions (PLCs) that are individually calculated for each residential customer. Further, IGS argues that, at a minimum, EDUs should make available to CRES providers hourly interval data. (IGS at 6.) RESA supports the arguments raised by Direct Energy and IGS (RESA MC at 12).

The Low-income Advocates argue in their memoranda contra that the Commission should deny rehearing on the issues raised by Direct Energy and IGS. The Low-income

Advocates contend that it was the Commission's intent to defer these data transfer issues to the MDWG. Accordingly, the Low-income Advocates aver that the Commission should deny rehearing and allow these issues to be worked out between CRES providers, the EDUs, and other stakeholders through the MDWG. (LIA MC at 5-7.)

Additionally, FirstEnergy and Duke argue in their memoranda contra that the Commission should deny rehearing on the issues raised by Direct Energy and IGS (FirstEnergy MC at 5-6; Duke MC at 2-3). FirstEnergy asserts that the Commission has already declined to make new rules ordering the EDUs to provide interval usage data and other CEUD, and that there is nothing unreasonable or unlawful about the procedural mechanism and schedule adopted by the Commission (FirstEnergy MC at 5-6). Similarly, Duke argues that Direct Energy's recommendations will force an order prior to the resolution of many important issues and that IGS' recommendations are not yet feasible, possible, or developed in the record before the Commission (Duke MC at 2-3).

(29) The Commission finds that rehearing on Direct Energy's assignment of error should be granted. The Commission finds that the EDUs must provide interval CEUD to CRES providers, in a manner consistent with the Commission's rules, Ohio Adm.Code 4901:1-10-24, and must file amended tariffs that specify the terms, conditions, and charges associated with providing interval CEUD within six months of this Entry on Rehearing. Additionally, the Commission finds that rehearing on IGS' assignment of error should be denied. The Commission believes that the EDUs should establish the terms, conditions, and charges for providing interval CEUD, based upon their capabilities and cost considerations, and the Commission will review those terms, conditions, and charges when the EDUs file their amended tariffs.

(30) IGS argues that the Order is unlawful or unreasonable because it directs the EDUs to file tariffs that include charges when providing interval CEUD data. IGS asserts

that it is not appropriate to charge customers or CRES providers for CEUD. IGS avers that customers have already paid for metering upgrades through distribution rates or riders and there should not be additional charges to provide the customers or CRES providers the data. (IGS at 6.)

FirstEnergy argues in its memorandum contra that the Commission should deny rehearing on this issue because IGS has not demonstrated that the Order is unreasonable or unlawful. FirstEnergy avers that the Commission is permitted, and even required by law, to permit cost recovery for new services such as CEUD upgrades. (FirstEnergy MC at 7.)

(31) The Commission finds that rehearing on this issue should be denied. As we indicated in the Order, the tariff amendments filed by the EDUs should address or include the recovery of any necessary capital improvement or infrastructure costs to provide CEUD. Order at 36. We reject IGS' argument that customers have already paid for CEUD through paying for metering upgrades through distribution rates or riders, as those rates or riders may not have included the additional cost of providing the CEUD to customers and CRES providers. We find that, if an EDU can demonstrate that there are necessary capital improvement or infrastructure costs to provide CEUD, then it is appropriate for the EDU to include this cost in its tariff amendment. Accordingly, rehearing on this issue raised in IGS' application for rehearing is denied.

(32) The Low-income Advocates argue that the Commission unlawfully and unreasonably ordered the EDUs to offer time-differentiated generation rates through their advanced metering infrastructure (AMI) programs and to recover the costs through their AMI riders. The Low-income Advocates assert that any further development of time-differentiated rates should occur in individual EDU rate proceedings where costs and benefits can be explored and considered. (LIA at 15-17.)

(33) The Commission finds that rehearing on this issue raised by the Low-income Advocates should be denied. Initially, the Commission notes that the Order already determined that EDUs with AMI/Smartgrid deployment should be encouraged to include a time-differentiated rate pilot program in their next ESP. Therefore, for those EDUs with an established AMI/Smartgrid program, the Commission has already authorized what the Low-income Advocates request. Order at 38. Further, for those EDUs that do not have an AMI/Smartgrid program, the Commission encouraged such EDUs to include a proposal for a time-differentiated rate pilot program in their application to establish the AMI/Smartgrid program. Order at 38. However, despite the Low-income Advocates' assertion, the Commission did not order the implementation of time-differentiated rate pilot programs. Rather, the Commission *encouraged* the EDUs to include these programs in their next ESP or application to implement an AMI/Smartgrid program. Accordingly, this issue is not ripe for consideration and there was nothing unlawful or unreasonable about encouraging the EDUs to consider implementing this program. To the contrary, the Commission's decision to encourage time-differentiated pricing was consistent with the policy of the state of Ohio, pursuant to R.C. 4928.02(D).

It is, therefore,

ORDERED, That the application for rehearing filed by FES is granted as discussed herein. It is, further,

ORDERED, That the applications for rehearing filed by Direct Energy, DP&L, the Low-income Advocates, OCC, Duke, and FirstEnergy are granted, in part, and denied, in part, as discussed herein. It is, further,

ORDERED, That the applications for rehearing filed by IGS, Ohio Power, and NOPEC are denied. It is, further,

ORDERED, That Staff shall comply with the directives in Findings (7) and (17). It is, further,

ORDERED, That EDUs shall comply with the directives in Findings (11), (19), (25), and (29). It is, further,

ORDERED, That a copy of this Entry on Rehearing be sent to the Electric-Energy List-Serve. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

MWC/BAM/sc

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Barcy F. McNeal
Secretary